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OFFICE OF PETITIONS

In re Application of :
Van Den Berg et al. :
Application No. 09/855,535 : DECISION ON PETITION
Filed: May 16, 2001 : PURSUANT TO
Attorney Docket No. : 37 C.F.R. § 1.28(c)
04132.0099.00US00 :
Title: IMPLEMENT FOR :
AUTOMATICALLY DETACHING AND :
DISPLACING AN AMOUNT OF FEED, :
SUCH AS, FOR EXAMPLE, SILAGE OR :
HAY :
:

This is a notice regarding your submission of October 22, 2008, which is properly treated as a request for acceptance of a fee deficiency submission under 37 C.F.R. § 1.28(c). On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 C.F.R. § 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this notice is intended to imply that an investigation was done.

37 C.F.R. § 1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

- (a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
- (b) The small entity fee actually paid, and when;
- (c) The deficiency owed amount (for each fee erroneously paid); and
- (d) The total deficiency payment owed, which is the

sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, the small entity fee that was actually paid, the deficiency owed amount, and the total deficiency payment owed.

Your fee deficiency submission under 37 C.F.R. § 1.28 is hereby accepted. The petition is **GRANTED** accordingly.

This patent is now listed as a large entity.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.¹



Paul Shanoski
Senior Attorney
Office of Petitions

¹ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).